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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/526,777	03/16/2000	Jon K. Curry	1019-P-1	1768

7590 03/18/2003
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EXAMINER

LOFDAHL, JORDAN M

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 03/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/526,777

Applicant(s)

CURRY, JON K.

Examiner

Jordan M Lofdahl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-15 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Paper No. 14, filed 2/19/03, with respect to the rejection(s) of claim(s) 13 and 15 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, new ground(s) of rejections are made:

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koros et al (5593157).

As to claim 13, disclosed is an animal toy including a compressibly elastically deformable hollow thin-walled non-spherical (a football is read as non-spherical; col. 6, lines 42-49) rubber core (12) sealingly circumscribing and enclosing a selected compressible gaseous volume and including a center, a non-spherical outer surface, a wall one-sixteenth to five-sixteenths of an inch thick (col. 2, lines 30-32) and points on the outer surface at varying distances from the center; a cover (18) affixed to the outer surface of said core, said cover comprising a firm woven cloth heavily napped. Not disclosed is the cloth being shrunk. In the absence of any stated problems solved by or any stated advantage obtained by shrinking the cloth as claimed in the instant invention. It would have been

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obvious to one of ordinary skill in the art at the time the invention was made to shrink the cloth of Koros et al. Further such modification is merely an alternate equivalent affixing means performing the same intended function. Also disclosed is at least one elongate strip (21) of material extending over said outer surface.

As to claim 15, disclosed is an animal toy including a compressibly elastically deformable hollow thin-walled non-spherical (a football is read as non-spherical; col. 6, lines 42-49) rubber core (12) sealingly circumscribing and enclosing a selected compressible gaseous volume and including a center, a non-spherical outer surface, a wall one-sixteenth to five-sixteenths of an inch thick (col. 2, lines 30-32) and points on the outer surface at varying distances from the center; a cover (18) affixed to the outer surface of said core, said cover comprising a firm woven cloth heavily napped. Not disclosed is the cloth being shrunk. In the absence of any stated problems solved by or any stated advantage obtained by shrinking the cloth as claimed in the instant invention. It would have been obvious to one of ordinary skill in the art at the time the invention was made to shrink the cloth of Koros et al. Further such modification is merely an alternate equivalent affixing means performing the same intended function. The toy is capable of bouncing along a straight line or erratically.

Double Patenting

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6415740. Although the conflicting claims are not identical, they are not patentably distinct from each other because coextensive in scope.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dishong (4223636), Bell (4770123) and Plunk (5560320) all disclose related devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan M Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on 6-2:30 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703.306.4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7687 for regular communications and 703.305.7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.4180.

jml
March 11, 2003

Charles T. Jordan
CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600